

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6910 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI RATANBHAI VAGHELA

Versus

DISTRICT MAGISTRATE

Appearance:

MR VIJAY H PATEL for Petitioner

MR JOSHI, AGP, for Respondent No. 1, 4

MS DAWAWALA for Respondent No. 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/11/1999

ORAL JUDGEMENT

#. The District Magistrate, Ahmedabad, passed an order on 6th July, 1999 in exercise of powers under Section 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the Act"), detaining the present petitioner-Rameshbhai Ratnabhai Vaghela. The grounds of detention indicate that the detaining

authority was subjectively satisfied about the petitioner having been involved in black marketing of kerosene and that, on earlier occasion, he was involved in malpractices relating to quantity of sugar. The detaining authority also noticed that the petitioner was earlier fined by Mamlatdar with a penalty of Rs.100/-. The detaining authority, therefore, recorded subjective satisfaction about the repetitive involvement of the petitioner in such activities and, ultimately, passed the order of detention, as according to the detaining authority, this was the only remedy available with the detaining authority to prevent the petitioner from indulging into black marketing of essential commodities like kerosene, wheat, sugar, etc.

#. The detenu/petitioner after detention made a representation on 4th August, 1999, addressed to the Additional Chief Secretary of Civil Supplies Department, demanding xerox copies of certain documents to enable him to verify the signatures of those witnesses and, thereafter, make an effective representation. The detenu by the said very letter demanded copies of certain documents relied upon by the detaining authority while passing the order of detention. Thereafter, on 13th August, 1999, the detenu made a representation to the Advisory Board and lastly, having failed to secure reliefs, has approached this Court with this petition under Article 226 of the Constitution, seeking a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction setting aside the order of detention and with a direction to set the petitioner at liberty forthwith.

#. The petitioner has raised many contentions to assail the order of detention and to support the relief sought in the petition.

The main contention on basis of which alone the petition can be allowed is raised in paragraph 13, wherein it has been contended that the petitioner had requested for supply of photostat/xerox copy of statements of pages No.12, 13, 17, 34, 45, 56, 84, 85, 86 and from 87 to 112 of the documents supplied to him to enable him to verify the signatures of the persons who are claimed to have given statements. The petitioner had also requested for supply of photostat copy of licence No.240/86 as well as authorisation letter No.199 and a copy of "G" register. These documents were demanded for enabling the petitioner to make an effective representation. The authorities concerned have not supplied the copies demanded by the petitioner and,

therefore, the fundamental right of making an effective representation enshrined under Article 22(5) of the Constitution is violated.

Mr. Patel, learned advocate appearing for the petitioner, has restricted his arguments to this ground only and submitted that when the petitioner was not supplied with these documents, he could not make an effective representation which is denial of constitutional right. The detention order, therefore, is vitiated. The petition, therefore, may be allowed and the petitioner may be ordered to be set at liberty.

#. Mr. Joshi, learned Assistant Government Pleader has opposed this petition. He submitted that the petitioner is involved in black marketing 25053 litres of kerosene. He has misused the essential and subsidised supply of kerosene for his personal benefit. The petitioner is a person who is habitual of such activity and, therefore, detention was the only remedy available with the detaining authority. The detaining authority has recorded all the aspects in detail in the grounds of detention and, therefore, the petition may be dismissed.

#. On pointedly being asked, Mr. Joshi, after referring to the file and upon instructions from an official from the Department, states that xerox copies of the statements and copies of other documents demanded by the petitioner vide his letter dated 4th August, 1999 were, in fact, not supplied to him. He tried to justify this non-supply by stating that the detaining authority deemed it not necessary to supply these documents.

#. Right of making an effective representation is accepted to be a fundamental right and, if a persons is not given an opportunity of making an effective representation by supplying all necessary documents, he is denied that right and a decision in absence of supply of such documents would, therefore, vitiate the detention. Even a delayed supply of documents has been held to vitiate the detention by the Apex Court in Ramchandra A. Kamat v. Union of India, A.I.R. 1980 SC 765, then non-supply of documents would certainly vitiate the detention.

#. In the above view of the matter, the petition deserves to be allowed and is hereby allowed. The impugned order of detention dated 6th July, 1999 in respect of the petitioner-Rameshbhai Ratnabhai Vaghela is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required

in any other case. Rule is made absolute accordingly
with no orders as to costs.

[A.L. DAVE, J.]

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